

*Personnel 4-1*

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## OGC Has Reviewed

13 October 1955

### MEMORANDUM FOR THE RECORD

SUBJECT: Gifts from Foreign Governments

1. I talked by telephone with Mr. Iyerly of the Legal Adviser's Office, Department of State, on this subject. In particular, we discussed the question of title to gifts which are being held for the recipient by the Department of State and the question of disposition of such gifts when the recipient severs his connection with the Government through discharge, retirement or death.

2. Mr. Iyerly said that the general problem has been much the same for the Department as it has been for this Agency. Although the Foreign Service Act specifically denies the right of any Foreign Service Officer to receive such gifts, in addition to the prohibition of other laws which apply to this Agency, there are many situations in which it is virtually impossible to refuse or return the gift. Often the gift is ostensibly that of an official of the foreign government rather than a gift of the government itself. Normally, if there is not evidence indicating that the gift is truly personal in nature, it is considered to be a gift of a foreign government and within the statutory prohibitions. In all such cases the recipient is expected to report the circumstances to the Department and turn the gift over for safe keeping. The Department has never decided the question of title to the gift while it is being held, but Mr. Iyerly feels that a fair interpretation would be that it is held in trust for the recipient and may be turned over to him with the permission of Congress, or without permission if he severs his connection with the Government. His estate could receive it upon death without permission from Congress.

3. In situations where it is considered necessary for the recipient to have possession of the gift for diplomatic purposes, the Department "loans" it to him. The loan is made to the recipient in his official capacity rather than to him as the owner of the item.

4. Mr. Iyerly pointed out that the statutes governing acceptance of gifts from foreign governments are lacking in enforcement provisions and that interpretation of them is virtually non-existent. In the past interpretation has been on the basis of what seems administratively most feasible, and there is no indication that any more concrete

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interpretation will be arrived at in the near future. He agreed that there certainly would be no objection from the Department of State and should be no objection from any other quarter if this Agency should elect to hold such gifts until the recipient severed his connection with the Government or until he had retired and the Agency felt it feasible security-wise to report the award to the Secretary of State in order that permission might be requested from Congress for the individual to take possession of it. Ordinarily, another agency of the Government should make regular reports to the Secretary of State of gifts received by its officers and employees from foreign governments, but there certainly would be no objection if this Agency elected to hold the gifts without reporting to the Department of State in order to preserve security.

5. It would appear that the law on this subject has never been nailed down to the extent that reasonable exercise of discretion on the part of this Agency in handling such gifts would be considered a violation of the Constitutional or statutory provisions against receipt of awards, gifts or decorations from foreign governments. If we decide that employees should turn the gifts over to the Agency for safe keeping and report them to the Secretary of State only when we think security allows such a report, it would not be considered a violation of law. The Agency should be considered a trustee for the donee who holds beneficial title to the gift, and the Agency may turn it over to him upon termination of employment or to his estate upon death.

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Office of General Counsel

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